

**MINUTES
of the
THIRD MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**November 4, 2013
Room 322, State Capitol
Santa Fe**

The third meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee was called to order by Senator Nancy Rodriguez, chair, on November 4, 2013 at 8:55 a.m. in Room 322 of the State Capitol.

Present

Sen. Nancy Rodriguez, Chair
Rep. Doreen Y. Gallegos, Vice Chair
Sen. Craig W. Brandt
Rep. Nora Espinoza
Rep. James Roger Madalena

Absent

Sen. Linda M. Lopez

Advisory Members

Rep. Miguel P. Garcia
Rep. Edward C. Sandoval
Rep. Elizabeth "Liz" Thomson

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Gerald Ortiz y Pino

Staff

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Nancy Ellis, LCS
Branden Ibarra, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 4

Welcome and Introductions

Senator Rodriguez welcomed the assembled group and asked members and staff to introduce themselves.

Summary of Fiscal Year (FY) 2015 Requests from the Department of Health (DOH)

Ruby Ann Esquibel, principal analyst for the Legislative Finance Committee (LFC), presented information to subcommittee members regarding the DOH FY 2015 requests (see handout), explaining that it is a general fund summary and does not include other state or federal funding. All departments are required to submit budget requests by September 1, Ms. Esquibel said, and the DOH is requesting to revise its budget because, with Medicaid expansion beginning in January, fewer general fund dollars will be needed. A detailed discussion of the Developmental Disabilities Supports Division (DDSD) budget ensued. Ms. Esquibel provided information on changes for FY 2015, which represent a 7.1 percent increase over the previous year. Subcommittee members discussed further the following topics.

Family Infant Toddler (FIT) Program. There has been an eight percent increase in the number of children being served in the FIT program, and because funds from the federal American Recovery and Reinvestment Act of 2009 have tapered off, more general funds will be needed to offset that loss, Ms. Esquibel said. A \$5.1 million increase for the FIT Program has been budgeted. When queried by a subcommittee member, Ms. Esquibel said the DOH had not requested any rate increases in FY 2015 for FIT Program Providers.

Supports Intensity Scale (SIS) assessments. Because Medicaid no longer will be providing matching dollars for the assessments, the testing will be funded in 2015 by general fund dollars. The additional \$1.2 million for SIS in the DOH budget actually represents a switch from one agency's budget to another, Ms. Esquibel explained. Cathy Stevenson, director, DDSD, added that the DOH has always paid the cost of SIS but the Human Services Department (HSD) held the contract. This year, the DOH will hold the contract, she said, so there really is no increase in the funding. The DOH will continue to use the SIS as required under New Mexico's developmental disabilities (DD) waiver with the Centers for Medicare and Medicaid Services (CMS), Ms. Stevenson said.

Jackson lawsuit expenses. An additional \$4 million is being budgeted by the DOH in FY 2015 for compliance with the long-standing *Jackson* lawsuit, from which the department is striving to disengage, Ms. Esquibel said. The additional funding is needed to cover increased costs in attorney fees, contractual services and personnel. While many DOH staff members work on different aspects of *Jackson* compliance, the department is proposing to add full-time

personnel to coordinate the effort, Ms. Stevenson said. If disengagement is successful in July, the full \$4 million may not need to be expended.

Supplemental Nutrition Assistance Program (SNAP) cuts. A member of the subcommittee asked Ms. Esquibel if the state had any plans to supplement SNAP funding due to cuts in the program at the federal level. There is no additional state funding budgeted for SNAP, Ms. Esquibel said. A discussion followed among several members about the consequences of the cuts — a \$36.00-a-month reduction of SNAP benefits for a family for four — and what one member described as an apparent lack of concern about the many children who go to school hungry.

Centennial Care for DD Waiver Recipients and Those on the Waiting List

Julie Weinberg, director of the Medical Assistance Division, HSD, provided a PowerPoint presentation (see handout) for the subcommittee. Centennial Care begins operation, along with Medicaid expansion, on January 1 and incorporates four managed care organizations (MCOs): Blue Cross Blue Shield, Molina Healthcare of New Mexico, Presbyterian Health Plan and United Healthcare Community Plan of New Mexico.

Centennial Care is designed to integrate physical health, long-term care services and supports and behavioral health services into a comprehensive care delivery system, Ms. Weinberg said. MCOs are required to conduct a health risk assessment for each member, which helps identify candidates for care coordination; level 1 provides some monitoring, level 2 provides significant coordination and level 3 provides the most intensive level of care coordination. Members in level 2 and level 3 will receive a comprehensive needs assessment to determine needs for physical and behavioral health, long-term care and disease management; following such assessments, a comprehensive care plan will be developed. During the assessments, a care coordinator may recognize the need for a nursing facility level of care (NFLOC) assessment, and people who meet a NFLOC standard are eligible for the community benefit (CB). The CB, Ms. Weinberg said, is a package of long-term services and supports (LTSS) that helps people remain in their community; included services are for personal care, adult day health, respite and environmental modifications. The cost per individual of CB services cannot exceed the cost of nursing home care.

Currently, Ms. Weinberg said, only persons who have a coordination of long-term services (CoLTS) "c" waiver get the full LTSS benefit package; there are approximately 900 individuals still on the CoLTS waiting list. Under Centennial Care, anyone who is Medicaid-eligible and meets NFLOC requirements will have access to the CB, opening up more CB slots in Centennial Care for people who are not otherwise Medicaid-eligible. Members may choose to receive CB services through an agency or they may self-direct their care, Ms. Weinberg said. Persons on the DD waiver will receive care coordination through their Centennial Care MCOs, which will be responsible for health care services. Persons on the DD waiver will continue to receive their services through the fee-for-service system, and the Centennial Care MCOs will not be responsible for DD waiver services. Individuals on the medically fragile (MF) waiver will

continue to receive their waiver services through June 2015; on July 1, 2015, the MF waiver will transfer to Centennial Care.

Questions/Concerns

Subcommittee members had questions for the presenters in the following categories.

Centennial Care and disabled populations. Persons on the waiting list for the CoLTS waiver (approximately 900) and who are Medicaid-eligible and meet the NFLOC requirements are immediately eligible for the CB, as are those in intermediate-care facilities, Ms. Weinberg reiterated. The HSD will then take a much closer look at who is on the CoLTS waiting list, since many spaces for those who do not qualify for Medicaid now will be opened up. CB services are nearly identical to "c" waiver services. Annual assessment of an individual or renewal of a care plan will be done through Centennial Care, Ms. Weinberg said, and these assessments are staggered so that there are no interruptions of service.

Although the MF waiver will be folded into Centennial Care in July 2015, the University of New Mexico (UNM) will continue to manage this group of fragile individuals, Ms. Weinberg said, referring members to page 26 of her handout for a clear description of what will happen to different disabled populations under Centennial Care. Asked by a member how Centennial Care will improve the quality of care, Ms. Weinberg said that through care coordination, there will be more people checking in on individuals, collecting information and establishing baselines, and it is expected that many "cracks" will be closed to achieve better outcomes. In the arena of behavioral health, Ms. Weinberg said, all previous services still will be available to individuals, in addition to several new ones, to provide community-based care.

Several subcommittee members expressed regret that many of New Mexico's behavioral health providers have been put out of business and thus are unable to be part of these changes.

Costs of Jackson compliance. A member noted that the DDS budget seeks to add 16 full-time-equivalent (FTE) employees for *Jackson* compliance and asked for further clarification. Ms. Stevenson described her staff as currently maximized. Five of the 16 will be additional investigators who are being put in place now, she said, but not just for *Jackson* compliance. There will be an additional FTE at each regional office, and several additional registered nurses, including one for individuals placed in nursing homes to determine whether they have been properly placed or would be better off in the community. The key attribute the court is looking for (before disengagement) is sustainability, Ms. Stevenson said. Another member asked about the funding allocated to the court-mandated compliance administrator Dr. Sue Gant. These funds will be used to employ her staff and for hiring expert consultants, Ms. Stevenson said.

Reversion of general funds intended to reduce the DD waiver waiting list. Ms. Stevenson provided subcommittee members with a written discussion (see handout) of factors affecting the FY 2013 projected reversion of \$4.3 million, as she said she promised at the October meeting of the subcommittee. Factors contributing to the reversion included a delay of entry into service of

new individuals, due to delayed approval by CMS of the state's new DD waiver amendment; allocation issues (more individuals left the DD waiver in FY 2013 than in previous years) that now will be able to be detected by the DOH's new ASPEN computer system; and the fact that more individuals selected the Mi Via waiver (Medicaid self-directed waiver), a less expensive option than the traditional DD waiver that saved more funding than had been anticipated.

Ms. Stevenson said that 465 individuals who have been on the waiting list will be moved into DD waiver services in FY 2014, 15 of those on an expedited basis. Asked how reversions can be avoided in the future, Ms. Stevenson said that the DOH needs to do a better job of bringing people into the program more quickly, and she pointed out that more FTEs (requested in the FY 2015 budget) will greatly enhance these efforts. Another member commented on the increasing popularity of the Mi Via waiver and encouraged the DOH to take steps to promote the program to the public — a win-win situation, since it also saves money for the state.

Senate Memorial 20 Final Report

Doris Husted, policy director for The ARC of New Mexico and co-chair of the Senate Memorial (SM) 20 task force, created as a subcommittee of the DOH Advisory Council on Quality, reported the group's findings to the subcommittee (see handout). The SM 20 task force was charged with determining what would be required to reduce the time frame between application and placement on a DD waiver to not more than three years by FY 2018. The task force was asked to examine what would be needed to accomplish this goal, including effective use of current programs and resources, and to determine critical components for success. The final report, presented today, is very important to families who are waiting for services and for agencies in terms of planning, Ms. Husted said. The composition of the task force was diverse, she said, and included individuals with developmental disabilities and their families, representatives from multiple state agencies, subject-matter experts from UNM, service providers, case managers and individuals from advocacy organizations (see Appendix B of the report for a complete list of participants). Senator Bill B. O'Neill and Representative Stephanie Garcia Richard also served on the task force.

The DDSD Intake and Eligibility Bureau receives approximately 1,000 registrations for the DD waiver and other services each fiscal year, and of these, approximately 300 meet the qualifications and are approved, according to the executive summary of the task force report. In order to improve the waiting list time frame, the task force made the following recommendations:

- expand the DD home- and community-based Medicaid waiver. The rate of attrition and a reduction of the budgets of individuals currently on the DD waiver cannot begin to meet the needs of people waiting;
- increase the appeal of the Mi Via home- and community-based Medicaid waiver;
- improve intake, information, referral and community navigation; and
- expand and redesign the state general fund program into a flexible supports model.

Significant challenges must be overcome for the task force recommendations to be carried out, the executive summary concludes. Among the most difficult are the need for additional appropriations and infrastructure/work force gaps — there simply are not enough providers in the community, Ms. Husted concluded.

Ms. Stevenson praised task force members for their hard work and dedication, and for arriving at consensus through many diverse perspectives. She also presented subcommittee members with a memorandum detailing the DOH perspective (see handout) on task force recommendations.

Regarding expansion of the DD waiver, Ms. Stevenson said the three-year time frame for eliminating the waiting list — which would assume the addition of 3,900 to the DD waiver annually — is not a feasible approach, given the lack of system capacity to provide necessary services in a manner that assures quality and safety. Ms. Stevenson said that a more measured approach of adding 300 to 500 individuals to the system each fiscal year would reduce wait time and allow for successful expansion of the service system. Working with the legislature, Ms. Stevenson said that a more aggressive approach to waiver allocations already is in process, with 328 being moved off the waiting list into services in FY 2013 and 465 projected to be moved off the list and into services in FY 2014. The DOH agrees with the task force recommendation to increase the appeal of the Mi Via self-directed waiver through improved marketing and adding a peer-to-peer support program; also, the DOH agrees with the recommendation for improved intake, information and referral and community navigation systems. Regarding redesign of the state general fund program into a flexible supports model, Ms. Stevenson said the DOH has previous experience with successful alternatives to Medicaid waiver services, and the department would welcome the opportunity to develop a pilot program related to this recommendation.

Ms. Husted noted that other members of the SM 20 task force were in the audience, and she asked them to stand and be recognized for their efforts.

In response to questioning by a subcommittee member about the possibility of an increase in provider rates, Ms. Stevenson said that rates certainly are part of the discussion about increasing provider capacity, and the recommendation on rates is for further study.

Approval of Minutes

Upon a motion made and seconded, the minutes of the October 4, 2013 meeting were approved, with the caveat that Ms. Mathis would confirm with Ms. Stevenson a question about "financial need" being a requirement for DD waiver eligibility as discussed earlier in this meeting.

SM 102 Progress Report

Nancy Koenigsberg, legal director of Disability Rights New Mexico (DRNM), presented subcommittee members with a progress report and tentative recommendations (see handout) from the SM 102 task force, which has met six times since July 2013. Members include

representatives from the Office of Guardianship of the Developmental Disabilities Planning Council, DOH, HSD, National Alliance on Mental Illness New Mexico, Public Defender Department, Administrative Office of the District Attorneys, Administrative Office of the Courts, Office of the Attorney General, Albuquerque Police Department and Disability Rights New Mexico and a corporate guardian and an individual living with mental illness.

As described in the task force handout, a treatment guardian is a person temporarily appointed to make mental health treatment decisions for an individual who the court finds is not capable of providing informed consent. In 2012, there were 665 petitions filed for treatment guardians statewide. New Mexico has the highest rate in the country of adult mental illness admissions to hospital emergency rooms and the highest number of incarcerated individuals who are mentally ill. Ms. Koenigsberg said that jail has become the largest mental institution in the state. Over the past several years, it has become apparent that the system for treatment guardians (created in provisions of the New Mexico Mental Health and Developmental Disabilities Code) needs additional resources to develop a more uniform process statewide, enabling consumers to access appropriate treatment when needed, and decreasing incarceration and crisis/emergency room interactions. District attorneys throughout the state have become concerned, Ms. Koenigsberg said, because at times they have had to prosecute persons clearly in need of a treatment guardian, and district attorneys do not have mental health expertise and are uncomfortable in this role.

Recommendations being considered by the SM 102 task force include the following:

- increase numbers of qualified treatment guardians throughout the state and provide more public information about how to use the process;
- develop uniform forms and rules to improve efficiencies and consistency across the state. This issue is currently being addressed by the New Mexico Supreme Court Ad Hoc Rules Committee for Mental Health Proceedings;
- develop standardized training for treatment guardians and education for judges, lawyers, clinicians and family members and others to ensure a consistent process throughout the state;
- promote more widespread use of psychiatric advance directives through increased outreach to consumers, families, clinicians and other key stakeholders;
- recommend legislation for the upcoming session to authorize the Office of the Attorney General to represent the state at petition hearings for treatment guardians through the use of special commissioned attorneys contracted to the Office of Guardianship;
- increase the \$200 stipend to treatment guardians for each individual represented and undertake a study to determine appropriate compensation in the future;
- develop links between treatment guardians, discharge planners and MCO care coordinators for better outcomes for consumers returning to the community; and
- improve data collection and reporting.

Ms. Koenigsberg said the task force also explored a number of ways in which the success of implementing these recommendations could be measured.

Not everyone who needs a treatment guardian is on Medicaid, Ms. Koenigsberg said, but most individuals who do need a treatment guardian are single adults and may qualify for the Medicaid expansion, so the possibility of care coordination may be better now than ever before.

Questions/Concerns

John Block III, executive director of the Developmental Disabilities Planning Council (DDPC) and a SM 102 task force member, was asked by a subcommittee member about previous reports to their group that treatment guardians were not getting paid. Mr. Block said he looked into this assertion and found that it was true; there are many prior-year payments that have not been made — \$250,000 — but the council cannot use its current year's budget for a prior year's payments. Mr. Block said he reported this problem to the Department of Finance and Administration and to the LFC and he has asked for waivers. Hopefully, by the end of the business day today, he said, the DDPC will have the authority to make those payments and will issue checks by the end of the week.

Another member asked when the task force report will be finalized. Ms. Koenigsberg said the task force intends for it to be complete in time for the upcoming legislative session. For two of the recommendations — 1) taking the district attorney out and putting the attorney general in; and 2) the request for additional funding to pay for specially commissioned attorneys general in the community — the task force is seeking this subcommittee's endorsement, she said. In response to a member's question about choosing a treatment guardian, Gabrielle Sanchez-Sandoval, general counsel at the DOH, said that a family member is looked at first, but often this population does not have that person available.

Grace Phillips, attorney and task force representative from the New Mexico Association of Counties, said the Bernalillo County Metropolitan Detention Center has the most robust program for the use of treatment guardians, but many administrators in the state do not know how to go about accessing the treatment guardian program and could use more education about the process.

State Use Act Report

Pamela June, executive director of Horizons of New Mexico, described the work of her nonprofit organization on behalf of the New Mexico Council for Purchasing from Persons with Disabilities. The State Use Act, enacted in New Mexico in 1978, expands employment opportunities for people with disabilities, Ms. June said. Currently, Horizons holds contracts valued at over \$2 million for businesses employing more than 900 persons. The State Use Act increases the amount of taxes paid to government while decreasing the amount required to be paid out in benefits, she said. There are now 23 other states that have a state use act.

Ms. June conducted a PowerPoint presentation (see handout) for the subcommittee highlighting five businesses currently under contract. Representatives of those businesses joined her for the presentation, including Henri Grau of Henri Grau Design and Photography; John A. Bishop, Jr., and Ellen Driber-Hassall of Aging Matters, LLC; Ruben Navarro of Galactic Network Integrators; Robert Rayner, architect with R2 Architectural Design & Consulting, LLC; and Cody Unser of the Cody Unser First Step Foundation.

In response to a question about requirements for an employer, Ms. June confirmed that the owner must have a significant disability, and 70 percent of direct labor must be performed by disabled individuals who all must be paid at least minimum wage. At least 51 percent of the business must be owned by the disabled person, Ms. June said. The businesses are fully integrated, with the disabled working alongside individuals who have no disabilities. "Disabled" is defined by Social Security, a physician or the Veterans Administration, and there are many pages of qualifiers as to what is considered "disabled". Ms. June said she would be happy to provide copies of the required paperwork to the subcommittee.

Public Comment

Tim Carver, chief financial officer of San Juan Center for Independence in Farmington (SJCI), noted that vocational rehabilitation funding in New Mexico has been cut by 17 percent, and he urged that Centennial Care be directed to "get the consumer back in with the personal care option". The SJCI is one of five independent living centers in New Mexico; the centers are non-residential, consumer-controlled and disability-focused programs that assist individuals to live independently in their communities.

Jim Jackson, executive director of DRNM, said he wanted to address three separate issues discussed in today's meeting: 1) regarding the SM 20 task force and the waiting list for the DD waiver, Mr. Jackson said he found it troubling that the DOH has led this task force and yet has requested zero dollars for the waiting list in its new budget. He would like to look at more creative ways to keep dollars meant to get individuals onto the waiver from reverting back to the general fund; 2) in response to the use of the SIS, some individuals are experiencing a reduction of therapy services, Mr. Jackson said, and he has concerns about their due process; and 3) regarding the State Use Act, Mr. Jackson said that he was surprised there was not more data in the report presented today and that he has some concerns about the program and the fact that businesses are required by law to contract with these disabled providers. He said he is not sure this is the best way to do integrated employment. Mr. Jackson told members that two years ago, the Governor's Commission on Disability convened a task force to address issues with the State Use Act, and he could provide a copy of its recommendations to the subcommittee.

James Stevens described an accident that occurred in New Mexico three years ago in which he was a passenger in a vehicle that was hit by a truck driven by a worker for Comcast who lived in Colorado but was uninsured. Mr. Stevens said he tried to get the sheriff to write up the driver for lack of insurance, but to no avail. "How can Comcast hire someone from out-of-state who does not have insurance? Where is the justice?", he asked. Mr. Stevens is seeking

\$3,000 to cover his medical bills, but cannot get help from anyone at the state level; he says he has been to the Public Regulation Commission, the Office of Governor and the Insurance Division and no one will help him.

Anna Otero-Hatanaka, executive director of the Association for Developmental Disabilities Community Providers (ADDCP), spoke about the importance of the FIT Program, which has a \$4 million deficit this year, the same as last year, she said. The FIT Program is losing staff because there has been no rate increase for providers for 12 years. Ms. Otero-Hatanaka also spoke about guardianship for the developmentally disabled, which is given for life. In fact, DD individuals may not need a guardianship for their entire lives, she said; the point of many therapy services is to help them become independent. Ms. Otero-Hatanaka said she feels the State Use Act is a very important program to provide employment opportunities for the disabled, and especially for returning veterans of the wars in Iraq and Afghanistan. She was asked by a member about recent changes to the FIT Program, which now ends on the child's third birthday. If the child qualifies, some can get continued help through the public schools, but there are many in the at-risk category who do not qualify, the member said. It was noted by other members that \$5.1 million has been budgeted for the program in FY 2015.

Robert Kegel, who has a developmentally disabled adult son, is highly critical of the state's use of SIS assessments and has done considerable research on the topic. Mr. Kegel presented a detailed critique of changes to DD waiver services based on the SIS, asserting that Down syndrome individuals are being unfairly targeted by the SIS for reductions in services. Mr. Kegel presented members with a copy of public comments and responses to the rate-setting project prepared by Burns & Associates, Inc., of Phoenix (see handout). There is a disparity between rural and urban in the rate study, he said, with rates favoring large urban providers. Savings are being effected by reducing employment and knocking down the family living budgets, Mr. Kegel said. Out-of-state assessors are being used to conduct SIS evaluations, and this year, \$4.6 million is being budgeted for this, but no one knows what is in this contract, he asserted.

In response to questions from subcommittee members, Mr. Kegel said he had spoken to the CMS about his concerns. The CMS has referred him to the Office of Civil Rights, and he is now preparing a report for that office. Ms. Stevenson, who stayed at the meeting through the public comment process, told members that she would like to submit a formal written document in response to Mr. Kegel's presentation. She also wants to present written information to the subcommittee on the number of SIS reassessments that have been conducted to date. A member noted that some consumers have been discouraged from appealing their SIS scores, because the second score will prevail regardless. Ms. Stevenson said that the SIS score can be appealed through a fair hearing and that she stands behind the SIS as an effective tool. Another subcommittee member, who has a disabled adult son, disagreed, stating that she had felt bullied during her son's SIS evaluation and that it was not a strong enough tool to decide someone's future. Mr. Jackson commented that DRNM, just in this past week, has sent out a fair hearing form to recipients of SIS assessments.

Mr. Kegel assured subcommittee members that he has no agenda except to improve the lives of New Mexico's developmentally disabled.

Adjournment

There being no further business, the meeting adjourned at 5:00 p.m.

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